



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP- 174481

PRELIMINARY RECITALS

On May 20, 2016, the above petitioner filed a hearing request under Wis. Admin. Code §HA 3.03, to challenge a decision by the Department of Health Services regarding FoodShare benefits (FS). The hearing was held on June 14, 2016, at Milwaukee Wisconsin. The Petitioner appeared by phone.

The issue for determination is whether the Office of Inspector General correctly determined the Petitioner was overpaid \$220 in benefits for the period of April 1, 2015 through April 30, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
P.O. Box 309
Madison, WI 53701

By: [REDACTED] Trafficking Agent
Office of the Inspector General
P.O. Box 309
Madison, WI 53701

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 4, 2016, the Office of Inspector General (OIG) prepared an Administrative Disqualification Hearing Notice alleging that on an unspecified date, the Petitioner sold her quest card, which had an unspecified amount of benefits on it, for an unspecified amount of money. The notice advised the Petitioner that a disqualification hearing had been scheduled for her on April 5, 2016 at 9:45 a.m. (Exhibit P10)

3. On April 5, 2016, the disqualification hearing took place before the Division of Hearings and Appeals as scheduled. This was case FOF-172212. The Petitioner did not appear for the hearing and did not provide good cause for her absence. (Exhibit P2)
4. On May 11, 2016, the Division of Hearings and Appeals issued a decision in case FOF-172212, finding that on an unspecified date the Petitioner sold her FoodShare benefits to a person identified as AB for an unspecified amount of cash. (Exhibit P2)
5. On May 18, 2016, OIG sent the Petitioner a FoodShare Overpayment Notice for claim [REDACTED], alleging an overpayment of \$220 for the period of April 1, 2015 to April 30, 2015. (Exhibit P3)
6. On May 20, 2016, the Petitioner called the Division of Hearings and Appeals to request a hearing. (Exhibit R1)

DISCUSSION

[REDACTED], a trafficking agent with OIG testified that a person identified as "[REDACTED]" contacted him and told him that she gave the Petitioner \$220 to purchase her Quest Card. [REDACTED] testified that [REDACTED] provided him with the text messages in Exhibit P7 and the photos of Petitioner's Quest Card in Exhibit P8.

The cell phone, on which the text messages appear, indicates the current date is April 15 and that the text messages were from "Sunday". Based upon [REDACTED]'s testimony, this would have been Wednesday April 15, 2015, so "Sunday" would have been April 12, 2015. *See also* <http://www.timeanddate.com/>

The Petitioner testified that OIG is misinterpreting the text messages in Exhibit P7. Petitioner testified that a person she knows as "[REDACTED]" loaned her \$220 and when she didn't pay back the \$220, [REDACTED] got mad. The Petitioner testified that [REDACTED] later came to her house and snuck into her bedroom and took her Quest Card.

Petitioner's testimony is not credible and hardly explains her message to "[REDACTED]" that [REDACTED] was justified in being upset because [REDACTED] bought something, but didn't get it on time. Nor, does it explain Petitioner's message to "[REDACTED]" that Petitioner's father would deliver the card to [REDACTED].

Based upon the foregoing, it is found that the Petitioner sold her Quest Card to "[REDACTED]" for \$220 on or about April 12, 2015. As such, an overpayment of benefits occurred.

The next matter that needs to be determined is the amount of the overpayment. 7 CFR 273.18(c)(2) states that "claims arising from trafficking-related offenses will be the value of the trafficked benefits, as determined by (i) The individual's admission; (ii) adjudication; (iii) The documentation that forms the basis for the trafficking determination." Thus, the amount of the overpayment is the amount of benefits on the card at the time it was sold and delivered to [REDACTED].

While "[REDACTED]" paid \$220 for Petitioner's FoodShare benefits, it is unclear what amount of benefits were on the card. The Petitioner has made no admission regarding the amount of FoodShare benefits she sold; there has been no prior adjudication in which the amount of trafficked benefits was determined by a judge, and the documentation provided by the agency does not make clear what amount of benefits were purchased. As such, the amount of the overpayment cannot be upheld.

OIG will have to research its records and amend the overpayment notice to reflect the amount of benefits on the card at the time it was delivered to [REDACTED]. Petitioner should note that this might be more than the \$220 selling price of the card.

If the Petitioner disagrees with the new overpayment amount, the Petitioner will have to file a NEW appeal, limited to the issue of the overpayment amount.

At the hearing, the Petitioner indicated that she also wanted to appeal her disqualification from the FoodShare program that resulted from the decision issued in case FOF-172212. The Petitioner claimed that she never got the Administrative Disqualification Hearing Notice or the decision in case FOF-172212. However, there is no jurisdiction for the Division of Hearings and Appeals to review Petitioner's claim.

First, any claim regarding non-receipt of the hearing notice, needed to be filed within 30 days of the March 4, 2016 hearing notice, which would put the deadline to request a new hearing at April 3, 2016. See 7 C.F.R. §273.16(e)(4) Petitioner's appeal was not filed until May 20, 2016, as such it was untimely and no jurisdiction exists to review the merits of Petitioner's claim of non-receipt of the notice.

Second, and more significantly, Federal regulations prohibit further administrative appeals after an administrative disqualification hearing. See, 7 C.F.R. § 273.16(e)(8)(ii). Rather, an appeal for judicial review must be filed in circuit court, as the Petitioner was instructed on page 4 of the decision issued in case FOF-172212. The Petitioner is referred to that decision page for the procedures necessary to appeal to a circuit court. (I note that, that decision was included as Exhibit P2 for this hearing.)

If Petitioner would like legal assistance with an appeal to circuit court, she can contact Legal Action of Wisconsin at (414) 278-7722; 230 W. Wells St., Milwaukee, WI 53203.

CONCLUSIONS OF LAW

OIG correctly determined that an overpayment of benefits occurred, but it did not correctly determine the overpayment amount.

THEREFORE, it is

ORDERED

That OIG review its records to determine the amount of FoodShare benefits that were sold and that it amend overpayment claim # [REDACTED] to reflect the correct overpayment amount. OIG shall issue to Petitioner notice of its determination. OIG shall take all administrative steps to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

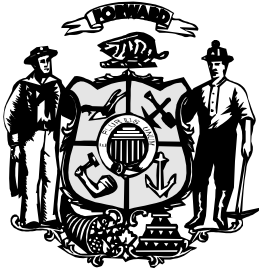
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of July, 2016

\s _____
Mayumi Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 12, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability